

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:13CR317
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
ROCKY FRY,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report (“PSR”). The government has not objected to the PSR. The Defendant’s objections appear at Filing No. 57. The Defendant’s objections to paragraphs 23, 24, 28, 33, 34 and 35 are denied, as those paragraphs reflect “the prosecutor’s version of the offense” (see paragraph 22) and the Court is not at liberty to alter those paragraphs, which have no affect on the calculation of the guidelines. The Defendant’s objection to paragraph 40 is also denied, as the Defendant is asking that the PSR characterize the Defendant as “cooperative”, contain a conclusion that the Defendant has “assisted law enforcement at all steps, and remains doing so.” The Court will not require that the PSR reflect such subjective statements which, again, have no affect on the guideline calculation.

See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Accordingly,

IT IS ORDERED:

1. The Defendant's Objections to Presentence Investigation Report (Filing No. 57) are denied, with the exception of the Defendant's request for safety valve eligibility, which will be addressed at the sentencing hearing;
2. The Court intends to adopt the PSR in all other respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, these tentative findings are final; and
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12th day of March, 2014.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge